Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1258

PETER TERRITO, JOHN CHANTREY, EDWARD A. BLANCHARD, AL BOSSIER, EDWIN HARTZMAN and HENRY R. CARTER,
Appellants

versus

CURTIS POCHE, JR. and VELMA POCHE, widow of Curtis Poche, Sr., Individually and as Administratrix of her Minor Children, Whitney Poche and Patricia Poche,
Appellees

ON APPEAL FROM THE SUPREME COURT
STATE OF LOUISIANA

OPPOSITION TO APPELLANTS' JURISDICTIONAL STATEMENT

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This is an answer to an appeal from the judgment of the Supreme Court, State of Louisiana, dated December 10, 1976, reversing the Court of Appeal, Fourth Circuit, State of Louisiana.

THE OPINIONS BELOW

The opinion of the Supreme Court of Louisiana is reported at 339 So. 2d 1212 (La. 1976), rehearing denied December 10, 1976. The opinion of the Court of Appeal is reported at 329 So.2d (La. App. 4th Cir. 1976).

JURISDICTION

Appellants' Statement of Jurisdiction infers that the validity or constitutionality of a Federal law [33 U.S.C. 933(i)] was put at issue in the State Court.

It further infers that the Louisiana Supreme Court held that State law superceded Federal law, or that 33 U.S.C. 933(i) was unconstitutional.

In the above particulars, Appellants' Statement of Jurisdiction is inaccurate.

At no time have Appellees challenged the validity and/or constitutionality of 33 U.S.C. 933(i), or, for that matter, any other part of the Longshoremen's and Harbor Workers' Compensation Act ("LHCA"). Nor did the Louisiana Supreme Court hold that Louisiana State law superceded Federal law, or that the Federal law was unconstitutional.

In this case, Appellees have simply sought legal redress for the death of Curtis Poche, Sr. under the laws of the State of Louisiana. Appellants challenged their right to so proceed, taking the position that they were forced to seek their remedies under the Federal laws.

The Supreme Court of Louisiana has held that Appellees may proceed under State law, and that they were not compelled to seek redress under Federal law, although that right had been initially *available to them.*

QUESTIONS PRESENTED

Appellees respectfully urge that the questions presented

are more properly stated as follows:

1. When Congress adopted certain amendments to the Longshoremen's and Harbor Workers' Compensation Act in 1972, and made LHCA benefits available to a new class of land workers, was the application of State compensation laws thereby pre-empted, or did they exist concurrently with the Federal Compensation Act?

2. If concurrent jurisdiction existed, and an injured party or his representative elected to pursue remedies under State compensation laws, could they avail themselves of all remedies granted thereunder, or were they limited to those which did not differ from the remedies found under LHCA?

STATEMENT OF THE CASE

In 1972, Congress amended the Longshoremen's and Harbor Workers' Compensation Act, and extended its benefits to certain classes of workers who performed their duties on land.

Curtis Poche, an employee of Avondale Shipyards, was killed while performing duties admittedly covered by the 1972 amendments. Following his death, his survivors accepted, and Avondale paid, Louisiana State compensation benefits in the amount of Sixty-five Dollars ($65) per week. LHCA benefits would have been approximately three (3) time as much.

This continued for more than one (1) year, at which time Avondale suddenly tendered to decedent's representatives a lump sum, which, when added to the Sixty-five Dollars ($65) per week already paid, would have equalled the higher benefits payable under LHCA. Appellees rejected this tender, and advised Avondale that they elected to pursue State compensation benefits.

One of the remedies afforded under the Louisiana compensation laws was the right to institute a negligence suit against executive officers and employees of decedent's employer.[1] Appellees herein pursued that remedy, which is the present suit under consideration.

Despite that fact that Avondale had initially treated the case as one which could be processed under State compensation laws, the insurer of/and officers and employees named as defendants opposed the right of Appellees to institute such a suit, contending that it was prohibited under the provisions of LHCA.

This was the factual posture under which the issues presented under Appellees "Questions Presented" were brought before the State Court for its determination.

The Supreme Court of Louisiana decided:

1. Congress had not intended by passage of the 1972 amendments to LHCA to pre-empt application of State compensation laws on the new land areas covered thereby;

1. LSA R.S. 23:1101. This action has been eliminated by Act 147 of the 1976 Louisiana Legislature, which amended LSA R.S. 23:1101 and 23:1032, the net result of which is the same prohibition against such suits as is found in U.S.C. 33:933(i).

2. Concurrent jurisdiction existed between the Federal and State compensation laws;

3. An injured party or his representative could elect to pursue remedies found under either of the two laws, but could not receive the benefits of both;

4. Where the injured party or his representative chose to pursue remedies provided under State law, they could pursue *all* remedies thereunder, and not just those which did not differ from remedies under LHCA.

In so deciding, the Louisiana Supreme Court relied entirely of precedents established by *this* Court, particularly the "twilight zone" and "choice of remedies" concepts which emerged from *Davis V. Department of Labor and Industries*, 317 U.S. 249 (1942), and the cases which followed.[2]

It concluded further that suits concerning the type of work and the class of workers under consideration did not fall into that sacrosanct area first defined in *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), which could affect the "relationship of vessels, plying the high seas in our navigable waters, or their crews", and consequently, there was no inherent constitutional impediment to concurrent application of State laws.

After concluding that concurrent Federal-State jurisdiction existed as to the new class of land-based workers, the

2. See authorities cited by the Louisiana Supreme Court, quoted at page A-11, of Appellants' Jurisdictional Statement.

Court then went on to decide the effect, if any, of the admitted differences found under the two statutes, particularly as to negligence suits.

The *ratio* of the Court as to this issue was quite simple. The pre-1972 "concurrent jurisdiction" suits allowed workers who chose State remedies to take advantage of State law in its entirety, not only those parts which harmonized with LHCA.

Since the 1972 amendments made no change whatsoever to Section 933(i) of LHCA, the implementation of concurrent jurisdiction should be as it was prior to 1972.

In other words, once the Court determined that the 1972 amendments simply expanded the scope of concurrent jurisdiction to encompass new land areas, the Court saw no reason to impose limitations based on statutory differences which had always existed, where no such limitations had been previously imposed.

The result of the Court's decision is not to impair the validity of 33 U.S.C. 933(i), nor is the effect to have that section declared invalid or unconstitutional. That section, as well as the entire Longshoremen's and Harbor Workers' Compensation Act, is given full force and effect under the factual posture intended, i.e., where an injured worker chooses to avail himself of LHCA benefits. Once this happens, then LHCA benefits provide his exclusive remedy, and he may not, thereafter, file any negligence suit against fellow employees or officers of his employer.

However, when the injured worker chooses to pursue

remedies afforded him under the State laws, and elects *not* to receive benefits under LHCA, he should be bound only by the limitations found under the State laws. His *remedy* is not under LHCA, and consequently, the *exclusions* found thereunder should not apply.

A "Federal question" may have been presented in this matter, in the sense that the Supreme Court of Louisiana examined an amendment to a Federal law, to determine whether it pre-empted an otherwise applicable State law. But the State Court's answer to the question complied totally with the judicial guidelines and *stare decisis* created by this Court, as will be seen by the numerous decisions cited and discussed in the State Supreme Court's decision.

In conclusion, whatever Federal question may have been presented has already been answered by this Court, and there should be no good reason to answer it again by granting the appeal herein sought.

CONCLUSION

For the foregoing reasons, probable jurisdiction should not be noted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that three copies of the Opposition to Appellants' Jurisdictional Statement was served upon all counsel of record by depositing same in a United States mail box, first class postage prepaid, addressed to counsel of record at their post office addresses.

April 6th, 1977.

CHARLES A. KRONLAGE, JR.